1949. **File No.** O. Townplan / 49

Legal Deptt.

A BRANCH

Subject:— Opinions under the Bombay Town planning Act 1915

P.S. E

File No. O. Town Plan / 49

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C O N T E N T S.

Legal Department File No.0. Town plan/49.

	M.I/O.No.	Subject.	Pages.
		Bombay Town Planning Act,1915.	
1.	M.I.No.897 15-1-49. O.No.2401 14-3-49.	Sec.51A--Town Planning Scheme by Administrator --whether there would be any objection to Govt. sanctioning the scheme under sec.9(6)	1 - 6
2.	M.I.No.3887 14 -3-49. 15 O.No.3855 1-4-49	Sec. 40(3) and 47 -- Liability of a Municipality to pay damages for variationof a Town Planning Scheme.	7 - 10-

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66.

Submitted.

2. It appears that the Administrator Malegaon Municipality during supersession of the Municipality had declared the Municipality's intention to make a Town Planning Scheme (published in B.G.G.pt.II E E dated 17-5-42 and 17-9-42) and had on 16-5-42 and 12-9-42 submitted applications to Government through the collector of Nasik for according sanction to the making of the scheme under sub-sion 3(6) of the Bombay Town Planning Act,1915. Since the City Survey of the area included in the proposed Town Planning Scheme was not made, the applications were held up by the Collr. till 6.7.48, when in a letter of even date the Collr. has requested Govt. to grant sanction for the making of the T.P. Scheme, the consulting surveyor to Govt, to whom the papers were forwarded by Govt. is of opinion that by section 51-A introduced in the Bombay Town Planning Act, 1915 by Bom.IV of 1942 the Administrator of a superseded Local Authority could perform the durties of the local Authority within the meaning of section 2(a) and that as the provisions of Bom. Act.IV of 1942 were repealed and renacted by Bom. Act.No.XXXIII of 1947 there may not be any objection to Government according sanction to the making of the Scheme as applied for by the Administrator. However he feels doubtful about the acts done by the Administrator under the repealed Act since, Bom.XXIII of 1947 contains no provisions validating such acts and has requested areference to the R.L.A. on the point. The H.& L.D. however consider that the Administrator of a superseded Municipality cannot be deemed to be the Municipality within the meaning of section 2(a) of the Act as it stood before its amendment in 1947 so as to enable him to under take a Town Planning scheme and that the action taken by the Administrator of Malegaon Municipality is not legal.

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Office of the R.L.A.

Bom. Town Planning Act, 1915. Section 51-A

Town Planning Scheme by Administrator.

By virtue of section 51-A of the Bombay Town Planning Act, 1915, inserted by Bombay Act IV of 1942 the Administrator of Malegaon Municipality was competent to make a town planning scheme and the repeal and reenactment of that provision would in no way effect the scheme made by him (see section 25 of the Bombay General Clauses Act, 1904). Consequently there would be no objection to Government sanctioning the scheme under section 9(6) of the Bombay Town Planning Act.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No.2901, dated the 14th March 1949.

R.K.N.5/6/56

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The Town Planning Scheme, Ahmedabad No.I. (Ellis Bridge) (Final) which was sanctioned by Govt. notification G.D., No.1704/33, dt.13-2-45 (published at page 436-437 B.G.G. Part I dt. 15-2-1945) was varied by a Notification dt.11-10 1945 (at. .887 in part II of the B.G.G.) . The declaration of intention of the Ahmedabad Municipalit to cancle and vary the said scheme in xxxxxxx respects was published at p.107 of pa't II of the B.G.G. dt.5-2-48. After considering the objections received by it the Municipality by its letter et.12.3.48 requested Govt. has received a number of representations from persons likely to be affected by it the varied scheme. One the proposed variations (item 21) relates to the extention of the period of completation of the work provided in the Ahmedabad Town Planning Scheme III which according to the Scheme was required to be completed before 15-49. The Municipality urges that this variation is necessary as it is not possible to complete the works according to schedule due to circumstances beyond their control like scarecity of material eet. As compli nce with the provisions of the finally sanctioned Scheme is obligatory, H.&.L.G.D. thinks that if the Municipality does not complete th work before the time prescribed for in Scheme III it would become liable to proceedings by land owners affected by the Scheme and consequently it is reluctant to sanction the varied scheme. The R.L.A. has been requested to advise in the matter.

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Office of the H.L.A.

iability of a unicipality to pay mages for variat- on of a Town lanning Scheme. he Bombay Town lanning Act,1915.

ec. 40(3) and ec.47?

It is true that the final scheme sanctioned by Government in the present case has by virtue of section 40(3) of the Bombay Town Planning Act,1915, become part of the Act and the local authority as provided in the scheme was required to carry out all works within four years i.e. by February 1949. When an act ordered a thing to be done by a public body or public officers and pointed out a specific time when it was to be done, that Act was directory only and might be complied with after the prescribed time(see Maxwell p.380, And ordinarily the default in carrying out the work within the prescri d period would not render it liable for damages to the land owners. A definite opinion can, how er, be expressed only when the claim for damages isformulated.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D.No.3555, dated the 1st April 1949

.K.N.5/5/58.

4C.